

**UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to civil penalties**

The Utilities Board hereby amends Chapter 8, “Civil Penalties,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 474.5 and 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.51, 476.103, 476A.14, 478.29, 479.31 and 479B.21.

*Purpose and Summary*

The purpose of this rule making is to update and amend the Board’s rules establishing procedures for assessing civil penalties. Specifically, the Board has revised the rules to reference the statutory sections that authorize the Board to assess civil penalties; clarify that the Board may assess civil penalties for willful and nonwillful violations of the statutes, Board rules, or Board orders; require filing a request for civil penalties electronically in the Board’s electronic filing system; and provide that the Board will schedule a hearing based upon the circumstances of the violation.

The Board issued an order on December 28, 2018, adopting amendments. The order provides a full discussion of the proposed amendments and is available on the Board’s electronic filing system, [efs.iowa.gov](http://efs.iowa.gov), under Docket No. RMU-2016-0023.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 20, 2018, as **ARC 3851C**. An oral presentation was held on July 24, 2018, at 2:30 p.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company (IPL); MidAmerican Energy Company; Black Hills Energy; and Board staff participated in the oral presentation. Comments were received concerning proposed subrule 8.1(1); OCA stated it was no longer suggesting any changes to the definition of “willful” other than what was currently proposed in the Notice of Intended Action. OCA stated it would oppose extending the definition of “willful” in 8.1(1) to the other subrules. IPL stated it would like the last sentence in subrule 8.1(1) to be removed and a definition of “willful” to be added that would apply to rule 199—8.1(476,476A,478,479,479B). Board staff stated that the specific definition of “willful” was added to subrule 8.1(1) because the definition is specifically discussed in Iowa Code section 476.51 and not in the other civil penalty statutes. OCA stated that the word “rule” should be changed to “chapter” in rule 199—8.5(476,476A,478,479,479B). No other changes suggested by the parties were made.

The Board changed the word “rule” to “chapter” in rule 199—8.5(476,476A,478,479,479B). No other changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 28, 2018.

### *Fiscal Impact*

These amendments update and amend existing rules that are required to be followed for requests for civil penalties. No additional actions having a fiscal impact are being adopted.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

No waiver provision is included in these amendments since the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 8.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on March 6, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—8.1(476) as follows:

**199—8.1(476,476A,478,479,479B) Civil penalty for willful violation.** ~~The board may assess a penalty against a public utility upon finding that the utility willfully violated a provision of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board.~~ civil penalties pursuant to the following statutes:

~~A willful violation exists where the evidence shows that the utility intentionally or knowingly violated a board rule, a provision of an order lawfully issued by the board in a proceeding involving the same utility, or a provision of Iowa Code chapter 476.~~

~~This rule is intended to implement Iowa Code sections 476.20 and 476.51.~~

8.1(1) Pursuant to Iowa Code section 476.51 for a violation of a provision of Iowa Code chapter 476, a rule adopted by the board, or a provision of an order issued by the board. For a continuing violation, the board may specify a time for curing the violation before assessing a penalty. The time specified for curing the violation is a case-by-case determination based upon the factors of the violation. A “willful” violation means knowing and deliberate action taken with a specific intent to violate.

8.1(2) Pursuant to Iowa Code section 476.103 for an unauthorized change in communications service.

8.1(3) Pursuant to Iowa Code section 476A.14 for unauthorized construction, operation, or maintenance of a facility as defined in Iowa Code chapter 476A without first obtaining a certificate issued by the board or a waiver of the certificate requirement.

8.1(4) Pursuant to Iowa Code section 478.29 for a violation of electric transmission line franchise requirements.

8.1(5) Pursuant to Iowa Code section 479.31 for a violation of the permit requirements for a pipeline or underground gas storage facility.

8.1(6) Pursuant to Iowa Code section 479B.21 for a violation of the permit requirements for a hazardous liquid pipeline or any order issued in accordance with Iowa Code chapter 479B.

ITEM 2. Amend rule 199—8.2(476) as follows:

**199—8.2(476,476A,478,479,479B) Procedure.** A request for imposition of civil penalties must be made within 180 days of the date the party filing the request knew or should have known of the alleged violation. The request shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made filed in the board's electronic filing system, [efs.iowa.gov/efs/](http://efs.iowa.gov/efs/). The request shall be in writing and must be delivered by United States Postal Service or personal service. The 180-day limit is tolled by commencing an informal complaint proceeding in accordance with Iowa Administrative Code 199—Chapter 6. If the board determines that a formal proceeding is required to consider a request for civil penalties, the board will establish a procedural schedule, which shall include notice and an opportunity for a hearing.

**8.2(1) Request by nonboard party.** As a part of a request for a formal proceeding in accordance with Iowa Administrative Code 199—6.5(476) or as part of any other contested case proceeding, the consumer advocate or any other person may request the board to impose civil penalties against a utility for a willful violation of a provision of Iowa Code chapter 476, a board rule, or an order lawfully issued by the board in a proceeding involving the same utility.

In a complaint proceeding, the request for imposition of civil penalties must appear on the face of a request for formal proceeding filed in accordance with the provisions of Iowa Administrative Code 199—Chapter 6. Upon receiving approval from the board, a party may amend its request for a formal proceeding to request the board to impose civil penalties at any time prior to the close of the submission of evidence. In any other contested case proceeding, the request must be made by written motion prior to the close of the submission of evidence.

**8.2(2) Board request.** On its own motion, the board may raise the issue of imposing civil penalties against a utility for a willful violation of Iowa Code chapter 476, a board rule, or a provision of an order lawfully issued by the board in a proceeding involving the same utility, as part of a contested case proceeding with adequate notice or by commencing a formal complaint proceeding in accordance with the provisions of Iowa Administrative Code 199—Chapter 6.

**8.2(3) Hearing.** If necessary, a hearing shall be held in accordance with the provisions of Iowa Administrative Code 199—Chapter 6 where there is an issue of adjudicative fact. The utility may waive its right to a hearing. A separate hearing on an adjudicative fact is not required if the same issue of adjudicative fact has been fully litigated by the identical parties with adequate notice as part of a contested case proceeding.

This rule is intended to implement Iowa Code sections 476.20 and 476.51.

ITEM 3. Amend rule 199—8.3(476) as follows:

**199—8.3(476,476A,478,479,479B) Penalties assessed.** The board, in its discretion, may levy penalties of not more than \$100 per violation or \$1000 per day of a continuing violation, whichever is greater. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues is a separate and distinct offense. Any civil penalty may be compromised by the board.

In determining the amount of penalty to be imposed for a willful violation, the board may consider the following factors in exercising its statutory discretion to impose civil penalties up to the maximum amount:

- 1.—Gravity of the offense;
  - 2.—The utility's prior record of Code, rule, and order violations;
  - 3.—The actual or potential harm or injury to an individual or the public resulting from the violation.
- This rule is intended to implement Iowa Code sections 476.20 and 476.51.

ITEM 4. Amend rule 199—8.4(476) as follows:

**199—8.4(476,476A,478,479,479B) Payment of penalty.** Civil penalties collected shall be paid in accordance with Iowa Code section 476.51, 476.103, 476A.14, 478.29, 479.31, or 479B.21, and any other applicable provision. The remittance shall be made payable to the Iowa Utilities Board and forwarded to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69,

Des Moines, Iowa 50319-0069. Remittance must be made within 35 days after ~~final agency action~~ assessment of the penalty unless otherwise ordered by the board.

~~This rule is intended to implement Iowa Code sections 476.20 and 476.51.~~

ITEM 5. Amend rule 199—8.5(476) as follows:

**199—8.5(476,476A,478,479,479B) Rate-regulated utilities.** A penalty assessed by the board pursuant to this ~~rule chapter~~ against a rate-regulated utility ~~must be recorded by the utility as a below-the-line, miscellaneous deduction from the income account~~ shall be excluded from the utility's costs when determining the utility's revenue requirement and shall not be included directly or indirectly in the utility's rates or charges to customers.

~~This rule is intended to implement Iowa Code sections 476.20 and 476.51.~~

ITEM 6. Adopt the following **new** implementation sentence in **199—Chapter 8:**

These rules are intended to implement Iowa Code sections 476.51, 476.103, 476A.14, 478.29, 479.31 and 479B.21.

[Filed 12/28/18, effective 3/6/19]

[Published 1/30/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/30/19.